

LOUISIANA PUBLIC SERVICE COMMISSION

GENERAL ORDER

LOUISIANA PUBLIC SERVICE COMMISSION
EX PARTE

Docket Number R-30579 Louisiana Public Service Commission, ex parte. In re: Discussion and possible vote at the May 14, 2008, Business and Executive Session, on amending General Order dated March 25, 2003, with regards to non-consensual towing and recovery rates, including but not limited to the 15% surcharge on equipment rental and labor subcontracted for, as provided for in Attachment “A”, Section E 4. In addition, the Commission will review and assess the entire General Order and compare the economic studies performed in 1999 and the economic study recently completed and submitted to the Commission on July 10, 2008, by the Towing & Recovery Professionals of Louisiana, Inc., to review all rates, including but not limited to all hourly rates.

(Decided at the March 10, 2010 Business and Executive Meeting)

(Amends and Supersedes “Attachment A (Amended)” of General Order dated October 02, 2008 & Order R-27182-B)

Purpose

This General Order was adopted by the Louisiana Public Service Commission (the “Commission” or “LPSC”) to provide an increase in the rates charged for non-consensual towing and recovery services, as provided in “Attachment A” of the Commission’s General Order dated March 25, 2003. In the interim, the Commission approved an increased by 8% to hourly rates contained in “Attachment A” of the aforementioned General Order. General Order dated October 02, 2008 was adopted while the Rulemaking docket number R-30579 was reviewed of the most recent economic study presented to the Commission by Towing Recovery Professionals of Louisiana, Inc.

Jurisdiction

This Rulemaking was established pursuant to the following Constitutional and legislative authority:

Article IV, Section 21 (B) of the Louisiana State Constitution provides that:

The [public service] commission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations, and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provided by law.

La. R.S. 45:180.1 C(1) provides that:

The [public service] commission has power and authority necessary to supervise, govern, regulate, and control the business of the operation and use of wreckers and towing services, to designate classes and categories of said vehicles, to fix reasonable and just rates, fares, tolls, charges for storage services, or charges for the commodities furnished or services rendered by persons engaging in the operation and use of said vehicles.

Background

At the April 16, 2008, Business and Executive Meeting, the Commission directed Commission Staff to open a rulemaking docket to examine the 15% surcharge on equipment rental and labor subcontracted by towing and recovery professions, as provided for in Attachment “A”, Section E 4 of the Commission’s General Order

dated July 7, 2000, thereafter amended and superseded by the Commission’s General Order dated June 19, 2001.¹ The request was published in the Commission’s Official Bulletin dated April 18, 2008, and Rulemaking docket number R-30579 was opened as per the directive. No interventions or oppositions were filed.

Thereafter, on July 10, 2008, the Towing & Recovery Professionals of Louisiana, Inc. (the “Association”) filed a request with the Commission for an increase in the hourly rates as provided in the Commission’s General Order dated July 7, 2000, amended and superseded by the Commission’s General Order dated June 19, 2001. In its request, the Association noted that the hourly rates had not been adjusted since the initial rulemaking and study, which was conducted in 1999. The Association also filed an economic study and suggested a rate increase of approximately 50%. After considering the Association’s request, Commission Staff recommended that the current Rulemaking docket number R-30579 be expanded to review the most recent economic study presented by the Association and that the entirety of the applicable General Order(s) be reviewed and reassessed. Commission Staff also recommended an interim rate increase of 8% on the current hourly rates contained therein, which is in line with recent increases granted to the vacuum truck industry, the interim rate increase of 8% was approved by the Commission at the September 10, 2008 Business and Executive Meeting.

Notice of the Rulemaking was republished in the Commission Bulletin on September 19, 2008. Comments had previously been received from Riverside Towing Inc., on May 5, 2008. A Technical Conference was held on November 18, 2008. Representatives of TRPL appeared at the conference and provided testimony. Mr. Charles Jacob or Jake’s Towing also appeared and testified. TRPL provided partial responses to Data Requests on October 6, 2008, December 22, 2008, February 9, 2008 and March 2, 2009 and provided additional information and documents on September 1, 2009 and October 2, 2009. Mr. Scott Mullen of Moon’s Towing Service, Inc. filed comments on April 14, 2009.

After review, the Transportation Auditor recommended a total increase of 28% to the charges set by General Order dated June 19, 2001. Therefore, an increase of 20% above the 8% interim increase, granted by General Order dated October 2, 2008, was recommended. The increase would still result in rates lower than neighboring jurisdiction, which were reviewed by Staff.

The increase would result in the following rates:

TOWING, RECOVERY & EQUIPMENT CHARGES

Light Duty Towing & Recovery			
Towing Charges	Standard Recovery Charges	Simple Water Recovery Charges	Stand-by
\$ 102.00 per hour *	\$140.00 per hour ^	\$160.00 per hour ^	\$ 51.00 per hour ^
*There is a 1 ½ hour minimum charge. After the 1 ½ hour minimum, charges will be computed in ½ hour increments.			^ Computed in ½ hour increments.

¹ Both of these General Orders were superseded by the Commission’s General Order dated March 25, 2003, which provides the current “Attachment A.”

Medium Duty Towing & Recovery			
Towing Charges	Standard Recovery Charges	Simple Water Recovery Charges	Stand-by
\$ 224.00 per hour *	\$ 288.00 per hour^	\$308.00 per hour^	\$ 112.00 per hour ^
*There is a 1 hour minimum charge. After the 1 hour minimum, charges will be computed in ½ hour increments.			^ Computed in ½ hour increments.

Heavy Duty Towing & Recovery			
Towing Charges	Standard Recovery Charges	Simple Water Recovery Charges	Stand-by
\$ 288.00 per hour *	\$ 352.00 per hour^	\$372.00 per hour^	\$ 144.00 per hour ^
*There is a 1 hour minimum charge. After the 1 hour minimum, charges will be computed in ½ hour increments.			^ Computed in ½ hour increments.

Other Towing, Equipment and Manpower Charges	
Private Property Tow	\$ 102.00 flat rate
Private Property Tow when specialized equipment such as Go-Jacks or Slide Outs are used or if additional manpower is needed (equipment and/or additional manpower must be documented)	\$125.00 flat rate
Mechanical Breakdown Tow	\$ 102.00 per hour*
Extra Truck & Trailer For Removal of Load	\$ 128.00 per hour*
Laborer	\$ 38.00 per hour*
Supervisor (see section III item # 6)	\$ 64.00 per hour*
*There is a 1 hour minimum charge. After the 1 hour minimum, charges will be computed in ½ hour increments	
Complete Air Bag Unit	\$ 2,048.00 flat rate (includes all equipment and personnel associated with the air bag recovery)
Rotator (when used according to the Provision in Section III # 5)	\$200.00 per hour **
**There is a 2 hour minimum charge. After the 2 hour minimum, charges will be computed in ½ hour increments	

Storage Fees		
Outside Storage Rate \$18.00 per day	Covered Storage Rate \$22.00 per day	Oversize Storage Rate \$36.00 per day

Fuel Surcharge	
The following surcharges shall apply on a per gallon basis to the total amount of the hourly rate charged and shall be applicable only to towing and recovery professionals performing non-consensual towing.	
Fuel Price (per gallon)	Fuel Surcharge
\$0.00 to \$0.90	3% reduction
\$0.91 to \$1.24	No reduction/surcharge
\$1.25 to \$1.99	3% surcharge
\$2.00 to \$2.99	9% surcharge
\$3.00 to \$3.99	12% surcharge
\$4.00 to \$4.99	14% surcharge
\$5.00 and greater	16% surcharge
There shall be no change in the top portion of the brackets. If fuel ever returns to the \$1.24 level and below, a surcharge shall not be charged. The surcharge will be based on the average price of self-service diesel fuel as determined based upon the price reported by the U. S. Department of Energy (DOE) for the Petroleum Administration for Defense District 3 (Gulf Coast).	

The proposed Order provides for an increase or decreased to the rates, as determined by the Consumer Price Index (CPI)) for the Southeastern United States Area, beginning on January 1, 2012 and every two years thereafter.

In addition to reviewing the requested rate increase, Staff, as directed by the Commission reviewed all definitions and general provisions of the previous towing and recovery general orders. This review was made in

an effort to address certain issues or concerns which arose from time to time in the industry and its dealings with consumers.

The following definitions were changed or modified:

- Light Duty - is defined as the towing, transport, and recovery of motor vehicles with a gross vehicle weight rating of 10,000 pounds or less.
- Medium Duty - is defined as the towing, transport, and recovery of motor vehicles with a gross vehicle weight rating of 10,001 pounds to 26,000 pounds.
- Heavy Duty - is defined as the towing, transport and recovery of motor vehicles with a gross vehicle weight rating of 26,001 pounds and greater.
- Motor vehicle – is defined as every self-propelled vehicle (except traction engines; road rollers, farm tractors, tractor cranes, power shovels and well drillers) and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails as per La. R.S. 32: 851 (4).
- Simple Water Recovery -is defined as the recovery of a vehicle when it is partially submerged in water and where the amount impedes recovery but does not exceed 12 inches in depth.
- Tow Only – is defined as a routine/standard tow that does NOT require special techniques or special equipment as defined in Recovery. Tow Only equipment is considered normal use of a tow sling, wheel lift, or winch cable to winch a vehicle onto a tilt bed tow truck. Tow Only rates as met in this definition shall apply whether the vehicle is either mobile or immobile and is in contact of the roadway surface.
- Recovery - is defined as the use of one or more of the following techniques under the following scenario: The use of air bags, winching, hoisting, up-righting, removing, or otherwise relocating a vehicle when the vehicle is found in such a location, state or position in which it could not remove itself from the location, state or position under the use of its own power, even if it were in complete operating condition.
- Complicated or Difficult Recovery
 - Rollover recovery - when additional operator required or needed.
 - Removal of unsecured load or debris from accident scene.
 - Unloading and reloading box trailers, box trucks, and flatbed trailers.
 - Water recovery – when an additional operator is required or needed other than those water recoveries defined as “Simple Water Recovery” above.
- Non-Consensual Tow/Recovery- is defined as the transportation of a vehicle by a wrecker/tow truck without the prior consent or authorization of the owner or operator of the vehicle. Nothing herein shall permit the seizure of a vehicle without first complying with the procedure established by law. A non-consensual tow/recovery shall not be converted at the accident scene or point of the hookup into a consensual tow/recovery by agreement of the owner or operator of the vehicle and the towing and recovery professional. However, the owner or operator of the vehicle and the towing and recovery professional may contract for the removal of the vehicle to a location other than the towing and recovery professional’s tow yard.
- Outside Storage- is defined as a vehicle being placed outside and exposed to the elements.
- Covered Storage- is defined as continuous covering which adequately protects a vehicle and its contents, where said vehicle and/or its contents have some intrinsic value. Covered storage includes, but is not limited to, the use of a tarpaulin or similar covering, such as “Crash Wrap,” which protects the vehicle and its interior from rain, dew, moisture and other elements.
- Oversized Vehicle Storage- is defined as the storage of a vehicle which is larger than one having a ¾ ton load capacity
- Unsecured Loads, Debris and Trailers - are defined by the weight of the items according to definitions A, B and C above.
- Private Property Tow – a tow from a location as provided for in accordance with La R.S. 32:1736.

The following Miscellaneous Provisions were modified or added:

- Charges will not be allowed for any services or equipment not listed or addressed in the approved **“SCHEDULE OF PRESCRIBED RATES AND REQUIREMENTS FOR TOWING & RECOVERY”**

- Rates are charged from time of dispatch at terminal until unhooked from towed vehicle.
- If the Towing & Recovery Professional must rent or subcontract equipment or labor not used in the normal course of a towing procedure (i.e. professional diver, bulldozers, front end loaders, dump trucks, forklifts, etc.), a maximum 10% surcharge may be added to the actual amount of the rental or subcontractors invoice. If said equipment is owned by the Towing & Recovery Professional or said labor is provided by the employee of the Towing & Recovery Professional it shall be invoiced at current market value, plus a 10% surcharge may be added thereto. Charges will not be allowed for the use of equipment, tools or supplies owned and/or provided by the Towing & Recovery Professional including but not limited to, oil-absorbing materials, brooms, shovels, flashlights, electric lanterns, fire extinguishers, emergency warning devices, steering wheel clamps, tow slings or tow plates, cables, blocks, chains, hooks, or any other truck components or hand tools mandated by the Louisiana State Police.
- A rotator may be used only if ordered by the law enforcement agency in charge of the accident or incident scene and the rotator is necessary to safely and efficiently restore the flow of traffic to travel lanes. The use of a rotator is not justified to ensure that the recovered and towed vehicle will not suffer any additional damage, beyond what is reasonable and customary.
- Recovery of hazardous materials cargo, as defined by D.E.Q. or State Police Hazmat Unit may be billed at 50% above the rate allowed on towing & recovery charges.
- All bills for non-consensual towing & recovery shall be itemized on a line item basis, including all LPSC prescribed and non-prescribed charges (i.e. gate fees, administrative fees.) For all charges other than storage fees, surcharges and the hourly rates for towing, recovery and stand-by, the towing company shall attach an invoice for the service rendered (including, but not limited to extra labor, extra equipment, administrative fees, etc. as provided for in item #4 above)
- All bills for non-consensual towing and/or recovery shall specifically state the time of dispatch and the time towing & recovery professional unhooked from towed vehicle.
- All bills for non-consensual towing and/or recovery shall include the following language printed on the bill: Complaints may be addressed to the Louisiana Public Service Commission- Attention Transportation Division, P.O. Box 91154, Baton Rouge, Louisiana 70821 or by contacting a district Commissioner. (In the event a complaint is made in writing to the Transportation Division of the LPSC or made to a district Commissioner, storage fees shall not accrue beyond the date of said complaint and shall not be charged to the vehicle owner if the charges are ultimately found to be excessive in a hearing before the Administrative Law Division or if the carrier pleads guilty to charging excessive rates.)
- It shall not be necessary for a complainant to pay a towing invoice to obtain standing to a towing complaint to the Commission and/or a District Commissioner.
- When a Towing & Recovery Professional performs a non-consensual tow, the Towing & Recovery Professional shall provide the following written notice to the vehicle owner or driver at the scene or at first contact: IMPORTANT NOTICE: This regulated non-consensual towing & recovery by [insert tow company name here] has been designated as a non-consensual tow. [insert tow company name here] is required to charge rates set by Louisiana Public Service Commission orders. These rates may be found on the internet by accessing www.lpsc.org or by contacting the Louisiana Public Service Commission, Transportation Division at 1-888-342-5717. If you have a complaint against this towing company regarding the amount charged for this non-consensual tow, complaints should be made in writing and addressed to P.O. BOX 91154, Baton Rouge, Louisiana 70821 or by contacting a District Commissioner.
- All complaints made under the Order and these Provisions shall be subject to the mediation orders and rules of the Commission.
- All rates set by this schedule shall be increased or decreased by an amount equal to the annual percentage rate as determined by the U.S. Department of Labor, Consumer Price Index (CPI) for the Southeastern United States Area. The first adjustment shall be made on January 1, 2012 and every two years thereafter.

STAFF RECOMMENDATION

Staff recommends that definitions, rates and provisions set forth in the attached proposed “Schedule of Prescribed Rates and Requirements for Towing & Recovery” be adopted by the Commission.

COMMISSION ACTION

On motion of Commissioner Skrmetta, seconded by Commissioner Campbell, and unanimously adopted, the Commission voted to accept the Staff Recommendation and adopt the proposed General Order.

IT IS THEREFORE ORDERED THAT

- 1. The Rates for Non-Consensual Towing and Recovery Services and related charges as defined Section II of the “Schedule of Prescribed Rates and Requirements for Towing & Recovery” are herby adopted as recommended.
- 2. The added and/or modified definitions as defined Section I and the added and/or modified provisions as defined Section III in the “Schedule of Prescribed Rates and Requirements for Towing & Recovery” are herby adopted as recommended.
- 3. The “Schedule of Prescribed Rates and Requirements for Towing & Recovery” attached to this General Order shall supersede prior versions of the General Order dated October 02, 2008 (Attachment A (Amended)) and Order R-27182-B.
- 4. This General Order shall be effective immediately.

BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA
March 26, 2010

/S/ LAMBERT C. BOISSIERE, III
DISTRICT III
CHAIRMAN LAMBERT C. BOISSIERE, III

/S/ JAMES M. FIELD
DISTRICT II
VICE CHAIRMAN JAMES M. FIELD

/S/ FOSTER L. CAMPBELL
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